

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

RESURRECTION SCHOOL; CHRISTOPHER
MIANECKI, individually and as next friend on
behalf of his minor children C.M., Z.M., and
N.M.; and STEPHANIE SMITH, individually and
as next friend on behalf of her minor child F.S.,

Plaintiffs,

v.

ROBERT GORDON, in his official capacity as
the Director of the Michigan Department of
Health and Human Services; DANA NESSEL,
in her official capacity as Attorney General of
the State of Michigan; LINDA S. VAIL, in her
official capacity as the Health Officer of Ingham
County; and CAROL A. SIEMON, in her official
capacity as the Ingham County Prosecuting
Attorney,

Defendants.

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Case No. 1:20-cv-01016

Hon. Paul L. Maloney

**MOTION TO DISMISS INGHAM
COUNTY DEFENDANTS
LINDA S. VAIL AND CAROL A.
SIEMON**

*** ORAL ARGUMENT
REQUESTED ***

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**MOTION TO DISMISS INGHAM COUNTY DEFENDANTS
LINDA S. VAIL AND CAROL A. SIEMON**

Proceeding under F.R.Civ.P. 12(b)(6), Ingham County Defendants Linda S. Vail and Carol A. Siemon, through counsel, respectfully moves to dismiss Counts I-VII of Plaintiffs' Complaint (ECF No. 1) with prejudice on grounds:

A. Plaintiffs lack standing to sue because Plaintiffs' claims against Defendant Vail and Defendant Siemon are not justiciable in that they are not ripe for consideration as Defendants have not taken any enforcement action against Plaintiffs for violation of the October 9, 2020 MDHHS Emergency Order or the October 4, 2020 Ingham County Health Department Emergency Order. Additionally, the claims are moot because Defendant Ingham County Health Officer Linda S. Vail rescinded the October 4, 2020 Order of her own volition on October 23, 2020, prior to being served with the Complaint;

B. Plaintiffs' claims against Defendant Ingham County Prosecuting Attorney Carol A. Siemon fail as Defendant Siemon is entitled to absolute immunity; and

C. Plaintiffs have failed to state a claim for any violation of their First Amendment rights, for any denial of due process; for denial of equal protection under the law, for unlawful exercise of authority under Michigan law and for impermissible delegation of legislative authority.

This Motion is based on the facts and authorities presented in the accompanying Brief in Support of Motion to Dismiss.

Respectfully Submitted,
COHL, STOKER & TOSKEY, P.C.

Dated: November 18, 2020

By: /s/ Bonnie G. Toskey
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